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July 22, 2003

Benjamin L. Ginsberg
(202) 457-6405
bginsberg@pattonboggs.com

COURIER

Jeff S. Jordan, Esq.
Supervisory Attorney
Central Enforcement Docket
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5637
Congressman Darrell Issa

5367

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2003 JUL 22 P 5:04

Dear Mr. Jordan :

This responds on behalf of our client, Congressman Darrell Issa, to the complaint filed against him in the above referenced matter. Mr. Issa is not seeking federal office in 2004. He is, however, seeking of the Governorship of California in 2003 through that State's unique recall and election process. Accordingly, for the reasons set forth below, Mr. Issa's activities fall within the exception to the nonfederal funds ban stated in 2 USC § 441i(e)(2) and 11 CFR § 300.63. Accordingly, the Federal Election Commission ("Commission") must dismiss the complaint and take no further action.

The complaint constitutes an attempt by the supporters of California Governor Gray Davis to save an extremely unpopular Governor from the humility of being recalled. It seeks, through harassment, to halt a funding source for the state law effort against the Governor by a candidate to replace him. The Commission should not permit political opponents in state and local elections to use the enforcement process to limit the clear right articulated in the statute that federal officeholders seeking election to state office may operate under state law.

Mr. Issa is not a candidate for federal office in the 2004 elections. He has not filed a Form 2, *Statement of Candidacy*, with the Commission or the California papers necessary to gain a position on the ballot for federal office from California. Rather, he is a candidate only for Governor of California. (See Exhibit A.)

Mr. Issa's candidacy is part of a unique procedure under California law that governs, at the same time and the same day and the same election, both the recall of the sitting of the Governor and the selection of a new Governor if the recall receives the majority of votes. Under California law,

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opponents of Governor Davis must gather a specified number of signatures to qualify a recall election. See Cal Elec. Code § 11020. Once qualified, a recall election is held in which California voters both vote on (1) whether Governor Davis should be removed from office, and (2) if the recall receives the majority of votes, the next Governor¹. See id. §§ 11320 & 11322. If a majority of the voters elect to recall Governor Davis, the gubernatorial candidate receiving the highest number of votes is elected Governor. See id. §§ 11384 & 11385. No federal candidates will appear on the ballot if, as Mr. Issa and recall supporters seek, the recall election qualifies for the ballot and the election is held this fall.

There is no limit under California law on the amount an individual, corporation or labor union may contribute to Rescue California, a group supporting the recall effort. See Cal. Gov. Code §§ 81000 et seq. Rescue California is registered and reporting with California Fair Political Practices Commission in compliance with California campaign finance law. See Complaint at 2-3.

Mr. Issa's activities in support of the recall petition effort and his candidacy for Governor of California are simultaneous and permissible under 2 USC § 441(e)(2) and 11 CFR § 300.63. The petition process for qualifying the recall election is a legal requirement to holding a new election for California Governor and, therefore, part and parcel, under California law, of Mr. Issa's candidacy for Governor. As such, the recall petition drive that is the subject of the complaint is analogous to an additional petition requirement for a gubernatorial candidate to gain access to the election ballot.

The complaint does not allege, nor can it, that any moneys spent by Rescue California were used to support any federal candidate or to finance any federal election activities. Rather, Rescue California's efforts, and Mr. Issa's activities, have focused exclusively on state political and election matters related to qualifying a recall election of Governor Davis and Mr. Issa's candidacy to replace him. Accordingly, Mr. Issa's activities and financial support of Rescue California are in connection with his candidacy for state office and permissible under 2 USC § 441(e)(2) and 11 CFR § 300.63.

¹ Candidates for Governor for the recall election must gather a specified number of signatures and pay a filing fee in order to gain access to the recall ballot as a gubernatorial candidate See Cal Elec Code §§ 11000 et seq



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The Commission must dismiss this complaint and take no further action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Benjamin L. Ginsberg', written over the typed name.

Benjamin L. Ginsberg
William J. McGinley

Attachments

25044124137

SECRETARY OF STATE

ELECTIONS & VOTER INFO

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Campaign Finance Activity

ISSA FOR GOVERNOR, DARRELL

Election Cycle:

- ☒ 2003/2004 Session
☐ Prior Sessions

View Information:

(Due to the amount of data, these pages may take some time to load.)

- ☒ General Information
☐ Contributions Received
☐ Contributions Made
☐ Expenditures Made
☐ Late Contributions and Interim Filings (Prop. 34)
☐ Electronic Filings



This is the official name of the committee, political party, or major donor as with the Secretary of State.

FILER ID:

1255209

SUMMARY INFORMATION - ISSA FOR GOVERNOR, DARRELL (ID# 1255209)

CURRENT STATUS

ACTIVE

This committee has not electronically filed a Form 460/461 for this election cycle. For further information, click on prior sessions to see if historical filings are available.

SECRETARY OF STATE

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Campaign Finance Activity

ISSA, DARRELL E.



Candidates manage their campaign funds through their campaign committee detailed information, select a committee below. Also check Late Contribution since they are not included in these totals.

PARTY

RACES (NOT INCLUDING RACES BEFORE JANUARY 1ST 2000)

OFFICE

ELECTION

RESULT

No Races Found.

ISSA FOR GOVERNOR, DARRELL (ID# 1255209)

CURRENT STATUS

ACTIVE

This committee has not electronically filed a Form 460/461 for this election cycle further information, click on prior sessions to see if historical filings are available